

AMENDED IN SENATE MAY 4, 2006

AMENDED IN SENATE MAY 1, 2006

AMENDED IN SENATE MARCH 21, 2006

SENATE BILL

No. 1311

Introduced by Senator Soto

February 16, 2006

An act to add Section 1726 to the Civil Code, relating to liability waivers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1311, as amended, Soto. Liability waivers.

Existing law provides that everyone is responsible for the result of willful acts and for injury to another occasioned by his or her want of ordinary care or skill in the management of his or her person or property, as specified.

~~This bill would require any settlement, compromise, covenant, release, waiver of liability, or similar agreement, to be both written in English and written and orally transmitted in a language in which the person entering into the agreement is proficient, prior to execution, if that person is not represented by counsel and does not proficiently speak or understand the English language. The bill would provide for that agreement to be rescinded upon the failure to comply with this requirement.~~

This bill would declare the intent of the Legislature to require the President of the State Bar of California to appoint a task force to study and report to the Legislature possible statutory protections that can be enacted to prevent a settlement, waiver, or liability release that is not knowingly and intelligently made by an unrepresented tort

victim because of miscommunication or misinterpretation of the terms of the settlement, waiver, or liability release where the negotiations were conducted in whole or in part in a language in which the victim was not proficient.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. (a) The Legislature finds and declares that if*
2 *negotiations are conducted in whole or in part to settle or*
3 *otherwise obtain a waiver or liability release of a potential tort*
4 *claim from an unrepresented tort victim in a language in which*
5 *the victim is not proficient, an unintended settlement, waiver, or*
6 *liability release can result from miscommunication or*
7 *misinterpretation of the terms of the settlement, waiver, or*
8 *liability release. Therefore, it is the intent of the Legislature to*
9 *require the President of the State Bar of California to appoint a*
10 *task force to study and report to the Legislature possible*
11 *statutory protections that can be enacted to prevent a settlement,*
12 *waiver, or liability release that is not knowingly and intelligently*
13 *made by an unrepresented tort victim because of*
14 *miscommunication or misinterpretation of the terms of the*
15 *settlement, waiver, or liability release where the negotiations*
16 *were conducted in whole or in part in a language in which the*
17 *victim was not proficient.*

18 *(b) Appointments to the task force shall include*
19 *representatives from the State Bar Office of Legal Services, the*
20 *Commission on Access to Justice, the State Chamber of*
21 *Commerce, a property and casualty insurer in California, the*
22 *Mexican American Legal Defense and Educational Fund, the*
23 *Asian Law Caucus, and the Chairs of the Senate and Assembly*
24 *Committees on Judiciary or their designees.*

25 ~~SECTION 1. Section 1726 is added to the Civil Code, to~~
26 ~~read:~~

27 ~~1726. (a) If a person who is does not proficiently speak or~~
28 ~~understand the English language is not represented by counsel~~
29 ~~and is entering a settlement, compromise, covenant, release,~~
30 ~~waiver of liability, or similar agreement, that agreement, prior to~~
31 ~~execution, shall be both of the following:~~

- 1 ~~(1) Written in English.~~
- 2 ~~(2) Written and orally transmitted in a language in which the~~
- 3 ~~person entering into the agreement is proficient.~~
- 4 ~~(b) Upon a failure to comply with subdivision (a), the~~
- 5 ~~aggrieved person may rescind the settlement, compromise,~~
- 6 ~~covenant, release, waiver of liability, or similar agreement.~~

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